IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7867 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

RAM SHANKER AMRUTLAL RAJGURU

Appearance:

MR HARDIK C RAWAL for Petitioner

(MR HK RATHOD) for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 29/06/2000

ORAL JUDGEMENT

#. Heard Hardik Raval learned counsel for the petitioner and Mr. R.V.Upadhay learned counsel for the respondent workman.

#. Respondent-Ramshanker A. Rajguru was working as a

driver under the Gujarat Road Transport Corporation (Corporation for Short). While working in the capacity of driver the respondent workman remained absent unauthorisedly from 22.2.1983 to 21.3.1983. As a result of this unauthorised absence, departmental proceedings was initiated against the respondent and inquiry was held. Inspite of notices the respondent did not participate in the departmental inquiry. After completion of the departmental inquiry the Disciplinary Authority issued show cause notice and the respondent did not submit reply to the show cause notice issued by the Disciplinary Authority. The Disciplinary Authority, after considering the papers of the inquiry was satisfied that the respondent should be dismissed from service. Accordingly the Disciplinary Authority passed an order dated 4.6.1983 dismissing the respondent from service. After a period of about 4 years, the respondent has taken up a dispute and the dispute has been referred to the Labour Court, Rajkot and the Labour Court, Rajkot registered the same as Reference (LCR) No. 512 of 1987. The Labour Court after taking evidence both oral and documentary held that the inquiry made by the Corporation was proper and there is no illegality or irregularity in the proceedings by the Inquiring Officer. However, the Labour Court has taken a lenient view in the matter of penalty imposed by the Corporation. Accordingly the Labour Court quashed the order of dismissal and directed the Corporation to reinstate the respondent with 50 percent back wages. Having felt aggrieved by the judgment and award passed by the Labour Court, Rajkot in Ref.(LCR) No.512 of 1990 the Corporation filed the present Special Civil Application praying for quashing the judgment and award passed by the Labour Court. Mr. Raval learned counsel on behalf of the Corporation submitted that the respondent was given sufficient opportunity to defend his case before the inquiry officer and he did not defend his case before the Inquiring Officer inspite of notices. The learned counsel on behalf of the petitioner further submitted that the Labour Court also came to a definite finding that the respondent did not participate in the inquiry proceedings and therefore, it cannot be said that no opportunity was given to the respondent to defend his case. Learned counsel for the Corporation further submitted that in earlier two occasions the respondent remained absent unauthorisedly and for committing aforesaid misconduct the respondent was twice awarded punishment of withholding increment but even after the aforesaid two punishments the respondent did not correct himself and he is a habitual absentee. Learned counsel for the Corporation has further submitted that the respondent was

engaged as a driver and such unauthorised absence disrupts the services of the corporation. Accordingly learned counsel for the petitioner submitted that when the respondent is a habitual absentee and inspite of two earlier punishments he has again committed similar misconduct, penalty of dismissal from service should not have been interfered with. Mr. Uapadhay learned counsel on behalf of the respondent submitted that the respondent was reinstated in service as this court did not grant any stay in the matter of reinstatement order. However, while admitting this petition the court has stayed payment of 50 percent backwages to the respondent. Learned counsel for the respondent very fairly submitted that since the respondent is reinstated in service and after reinstatement he has already served for 10 years in the Corporation. Therefore, his reinstatement in the post of driver may not be interfered. However, he leaves the matter of back wages to the court for decision. It appears that the respondent was, on earlier two occasions awarded the penalty of withholding of increments and inspite of that he remained absent unauthorisedly during the period from 22.2.1983 to 21.3.1983. It further appears that the respondent has taken different stand at different times for remaining absent from duty during the period from 22.2.1989 to 21.3.1983. All these matters have been examined by the Labour Court and the Labour Court has discussed the discrepancies in the stand of the respondent in its judgment and award. It is settled law that before deciding the question of penalty, past conduct has to be considered. In the present case it appears that the respondent was punished twice by awarding penalty ofwithholding of increment. Inspite of that he did not rectify himself and remained absent unauthorisedly for which departmental proceedings was drawn up and he was dismissed from service. It appears that the Labour Court did not interfere with the finding of the Inquiring Officer but while awarding the punishment the Labour Court has taken a lenient view. It further appears that the Labour Court did not take into consideration the past conduct of the respondent while deciding the question of penalty. Another aspect of the matter is that the respondent was dismissed by an order of the Disciplinary Authority on 4.6.1983 and he moved the authority for referring the dispute in 1987 i.e. four years after his dismissal. All these four years the respondent was sitting over in moving the dispute with the appropriate authority. Considering the first conduct of the respondent, I am of the opinion that the Labour Court has taken a too lenient view in the matter of penalty. Since the respondent has already been reinstated as back as in the year 1990, I do not like to

interfere with the reinstatement of the respondent. But non payment of entire backwages may not be sufficient punishment for the respondent as he is a habitual unauthorised absentee in duty and therefore, he deserves a more deterrent punishment. Therefore, I am of the view that stoppage of atleast two increments with cumulative effect will met the ends of justice. Accordingly the Order of the Labour Court dated 19.5.1990 is modified to the extent that two increments of the respondent shall be withheld with cumulative effect and he will not be entitled to any back wages. With aforesaid modification and direction the petition is allowed in part. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.K.Sarkar.J)

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